fact,[1] (2) which is false in point of fact,[2] (3) which was known by the defendant to be false or made by him as a positive assertion with reckless disregard whether it was true or false,[3] (4) which actually misled the plaintiff,[4] and (5) which resulted in damage to the plaintiff.[5]

A novel case in Washington, *Raser v. Moomaw*,[6] seems to contain all the above-named essentials for liability for fraud. The plaintiff was a real estate broker, and the defendant, to induce the plaintiff to secure a loan, introduced to him a woman represented to be K, the owner of a certain lot. The woman was not K, but was an imposter, which fact the defendant either knew or by proper diligence might have ascertained. The plaintiff relied upon the representations, was actually misled thereby, secured a loan from a client, and was compelled to pay the client the amount thereof. The lower court gave judgment for the defendant, which was reversed in the upper court.

As we read this case we are surprised to find that it has no exact precedents in the books. We would have thought similar situations would have been adjudicated in the courts, for it must be no very unusual thing for real estate agents to be led into such mistakes. The decision seems to us sound, and, if sound, it is a warning to real estate agents to be exceptionally careful in their daily transactions, where pecuniary liabilty may attach. The case most nearly like it is one that arose in Colorado.[7] There the plaintiff in error had falsely identified to the bank the holder of a certificate calling for the payment of money as the person who was named in the certificate. Relying upon those representations the bank paid the money to the holder of the certificate. The person who made the false identification was held liable to the bank.

W. C. J.

EQUITY: GIVING OF BOND BY PUBLIC UTILITY ON ISSUING OF PRELIMINARY INJUNCTION TO RESTRAIN ENFORCEMENT OF RATES. —When a preliminary or interlocutory injunction issues at the

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[1] Milliken v. Thorndike (1869), 103 Mass. 382; Nounnan v. Sutter County Land Co. (1889), 81 Cal. 1, 22 Pac. 515.

[2] Smith v. Chadwick (1884), 9 App. Cas. 187; Lester v. Mahan (1854), 25 Ala. 445.

[3] Toner v. Meussdorffer (1899), 123 Cal. 462, 56 Pac. 39; Mayer v. Salazar (1890), 84 Cal. 646, 24 Pac. 597. Of course, the leading modern English authority on the subject of deceit, Derry v. Peek (1889), 14 App. Cas. 337, laid down the proposition that there can be no liability for fraud, where the person making the representation in good faith believes it to be true. While some American decisions favor this view, the weight of American authority is as stated in the text.

[4] Nounnan v. Sutter County Land Co. (1889), 81 Cal. 1, 22 Pac. 515.

[5] Hicks v. Deemer (1900), 187 Ill. 164, 58 N. E. 252.

[6] (March 26, 1914), 139 Pac. 622.

[7] Lahay v. City Nat'l Bank of Denver (1891), 15 Colo. 339, 25 Pac. 704.

suit of a public utility to restrain enforcement of a rate fixed by legislative action, it is the duty of the court to maintain, as nearly as possible, the status quo of the parties, pending the determination of the enactment's validity, so that their respective rights may be preserved and injustice done to neither.[1] The federal courts have sought to do this in no less than three different ways.

In some cases, the complainant has been ordered to give bond to answer all damages which the defendants, or any person injured by reason of the injunction, might sustain.[2] But while sufficient protection may be thus afforded the utility, the individual consumer may suffer, since where his loss, as not infrequently happens, is comparatively slight, his remedy by action on the bond may be practically worthless on account of its expensive and burdensome character.

A few judges have followed Consolidated Gas Company v. Mayer,[3] and required that moneys collected by the utility from consumers, pending the injunction, in excess of the rates complained of, be impounded and retained under control of the court until such time as the validity of the rate shall be determined, and consequently, whether the complainant is entitled to the fund or it is to be returned to the consumers.[4] This course, though it has much to commend it in the effective relief enjoyed by the consumer, if the decision goes against the utility, is not without objectionable features. Aside from risk of loss arising from having such fund deposited in one or more banks—the only practical way of securing its safe keeping—the consumer or the utility, it has been urged, could expect, at the end of the litigation, little, if anything, more than principal as a return for being deprived of its use, because the money, being in the nature of a deposit on call, would probably draw, at the most, only nominal interest.

The latest and what appears to be the most satisfactory method yet proposed of solving this embarrassing difficulty is that of Judge Morrow in the District of Arizona.[5] The utility is ordered to give sufficient bond, and file monthly with the clerk of the court a statement showing the actual amount collected from consumers during the month, and what would have been collected under the new rates, if enforced; and upon final decree, if the issue is in favor of the legality of those rates, then the utility shall, within a definite time, to be fixed in the decree, pay into court the full amount

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[1] Bonbright v. Geary, and Kelley v. Geary (Nov. 19, 1913), 210 Fed. 44.

[2] Spring Valley Waterworks v. City, etc. of San Francisco (1903), 124 Fed. 574; San Joaquin & Kings River, etc. Co. v. Stanislaus County (1908), 163 Fed. 567.

[3] (1906), 146 Fed. 150.

[4] Buffalo Gas Co. v. City of Buffalo (1907), 156 Fed. 370; Spring Valley Water Co. v. City, etc. of San Francisco (1908), 165 Fed. 667; Pacific Tel. and Tel. Co. v. City of Los Angeles (1910), 192 Fed. 1009.

[5] Bonbright v. Geary, and Kelley v. Geary, supra, note 1.

collected by it in excess of the rates declared valid, together with interest thereon from date of collection, such amount, principal and interest, to be returned to consumers through a special master to be named by the court. Such order was approved and adopted in *Pacific Gas & Electric Company v. City, etc. of San Francisco*,[6] where the defendant's request that the moneys collected in excess of the rates fixed by ordinance be impounded, was refused. In his able discussion of the question in that case, Judge Van Fleet points out the superior advantages of Judge Morrow's order over those of an impounding order, and incidentally, over the older practice first above mentioned. By the complainant being given the use of the excess moneys pending the determination of the suit, they may be employed by it for the benefit of the utility and the consumers, instead of lying idle and benefiting neither, and when the consumer is entitled to a return of what he paid in excess of the legal rate, he obtains, without the necessity and expense of a suit, not only his principal, but equitable compensation for its use by the utility, which the latter may well be called upon to pay. It would seem that the learned judge's argument in support of his order is unanswerable. T. A. J. D.

EVIDENCE: PROOF OF CHARACTER FOR NEGLIGENCE BY REPUTATION.—In the case of *Young v. Fresno Flume and Irrigation Company*[1] the plaintiff proved the death of her minor son caused by the negligence of a fellow servant in the employ of the defendant. The fellow servant rule being at that time unrepealed it was incumbent on the plaintiff to prove the negligent character of the servant causing the injury and the defendant's knowledge of that character. This the plaintiff attempted to do by proving the reputation of the fellow servant for negligence. The court concedes that this reputation was admissible on the issue of knowledge on the theory that the employer should know his servant's general reputation, but holds that the character for negligence itself cannot be proved by reputation, but only by specific acts. Of the cases cited by the court only Park v. New York Central and Hudson River Railroad Company[2] is in point, and it seems in that case that the evidence of reputation was too remote. In Gier v. Los Angeles Consolidated Electric Railway Company[3] there was no evidence of reputation offered; the court simply held that one careless act did not prove a character for carelessness. With other evidence, however, a single negligent act is admissible in California.[4] In some jurisdictions, the law has refused to allow evidence of specific acts at

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[6] (Dec. 17, 1913), 211 Fed. 202.

[1] (April 7, 1914), 18 Cal. App. Dec. 501.

[2] (1898), 155 N. Y. 215, 49 N. E. 674.

[3] (1895), 108 Cal. 129, 41 Pac. 22.

[4] Worley v. Spreckles Bros. Com. Co. (1912), 163 Cal., 60, 124 Pac. 697; 1 Cal. Law Rev. 68.